

October 23, 1998

VIA FIRST CLASS MAIL

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The Honorable Pete Hoekstra, Chairman
Subcommittee on Oversight and Investigation
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC XXX-XX-XXXX

Re: Election Officer Case Nos. PR-123-IBT-PNW

PR-156-LU760-PNW

Gentlepersons:

Related pre-election protests were filed pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")***. Al Hobart, secretary-treasurer of Local Union 760, through the office of United States Representative Pete Hoekstra, filed a protest (PR-123) against Thomas Leedham, president of Local Union 206, western regional International vice-president, Director of the IBT Warehouse Division and a candidate for general president on the Tom Leedham "Rank and File Power" Slate ("Leedham Slate"); Joseph Fahey, president of Local Union 912, a representative of the IBT Warehouse Division, and field director for the Leedham campaign; Loreen Scheer, an IBT International Organizer; David Levine, a Teamsters for a Democratic Union ("TDU") staff

member; and the IBT. In response to this protest, Maria Luz Ortiz and Rufino Santiago, members of Local Union 760, filed a protest (PR-156) against Velma Perez, a Local Union 760 organizer; Victor Cerna, Nelson Rivas, and Jerry Schuffield, Local Union 760 business agents; and Local Union 760.

In PR-123, Mr. Hobart alleges that pretextual IBT workshops were scheduled to allow Mr. Fahey and Ms. Scheer, both supporters of the Leedham Slate, to travel at union expense in order to attend a campaign meeting and to gain access to union members for campaign purposes, in violation of the **Rules**. He adds that Local Union 760 members were unable to participate in the workshops due to the short notice given to his local union. Mr. Hobart additionally alleges that a meeting held in Yakima, Washington and sponsored by TDU was advertised at an employer facility as an official union function, in violation of the **Rules**.

Mr. Fahey responds that his travel to the IBT workshops was for legitimate union business; that his travel expenses to the workshops constituted a legitimate expense; that he did not engage in campaign activity while at the workshops; and that he did not attend any TDU functions during the weekend of the workshops. Ms. Scheer responds that she attended the TDU meeting on her own time and that she did not file a claim with the IBT for reimbursement of her travel expenses to and from the workshops.

TDU asserts that Congressman Hoekstra has no standing to file an election protest and that the protest is untimely. They also maintain that the IBT training program was arranged independently of any campaign activity. TDU additionally asserts that the TDU meeting held at the city park was mistakenly advertised as a union meeting by an employee at the facility in question, that an announcement was made at the beginning of the meeting to clarify that it was a TDU meeting and not a union meeting, that the protester presented no evidence showing that there was any campaigning at the TDU meeting, and that even if there was campaigning, there was no violation of the **Rules**.

In PR-156, Ms. Ortiz and Mr. Santiago allege that Ms. Perez and Messrs. Cerna, Rivas, and Schuffield intimidated and interfered with members attending a TDU meeting, and refused to leave when so requested, in violation of the **Rules**. Ms. Perez and Messrs. Cerna, Rivas and Schuffield admit attending the meeting but deny intimidating or interfering with any members.

Due to their related facts, the protests were consolidated for decision by the Election Officer. The protests were investigated by Adjunct Regional Coordinator Paige I. Keys.

I. Standing and Timeliness

Mr. Hobart sent a letter, dated June 4, 1998, to Congressman Pete Hoekstra in which he outlined the alleged **Rules** violations. Mr. Hobart did not send a copy of the letter or inform the Election Officer of the alleged violations. In his letter, Mr. Hobart connected the alleged **Rules**

violations to two workshops conducted by the IBT in Wenatchee and Yakima, Washington on Saturday, May 30 and Sunday, May 31, 1998, respectively. He also referred to a TDU meeting scheduled to be held on Tuesday, June 6, 1998. Mr. Hobart requested that Congressman Hoekstra act "to stop the blatant abuse and violation of the Election Rules as well as continued expenditure of Union funds" In a letter dated June 16, 1998, Congressman Hoekstra forwarded Mr. Hobart's June 4 letter to the Election Officer and suggested that he investigate the allegations raised by Mr. Hobart. In a letter dated June 17, 1998, the Election Officer informed Congressman Hoekstra that Mr. Hobart's June 4 letter had been received and had been docketed as a protest.

By a letter dated June 19, 1998, TDU requested that the Election Officer refuse to log as a protest the letter forwarded by Congressman Hoekstra. TDU based its request on the argument that Congressman Hoekstra is not a member of the IBT and consequently has no standing to file election protests. In the alternative, TDU argued that the protest was untimely due to the fact that the Election Officer did not receive the protester's charges until more than two weeks after the alleged violations of the **Rules**.

By a letter dated June 24, 1998, the Election Officer reminded Mr. Levy that regardless of how the Election Officer receives notice of alleged violations of the **Rules**, the Election Officer retains discretion to undertake an investigation. The letter then proceeded to inform Mr. Levy that Mr. Hobart's letter of June 4 had been logged as a protest and was being investigated.

It has been clearly established, as was reiterated in the June 24, 1998 letter to TDU, that the Election Officer retains complete discretion over a decision to investigate any alleged violations of the **Rules**, regardless of how such violations are discovered. Article XIV, Section 4 of the **Rules** explicitly states that the Election Officer may take appropriate remedial action "[i]f as a result of a protest filed or any investigation undertaken by the Election Officer, with or without a protest, the Election Officer determines that the **Rules** have been violated." Therefore, the Election Officer has the authority to address a violation of the **Rules**, even in the absence of a protest.

Consequently, although Congressman Hoekstra does not have standing to file an election protest with the Election Officer, the Election Officer's decision to treat the letter forwarded by Congressman Hoekstra as a protest falls directly within his discretionary power under the **Rules**.

With regard to the issue of timeliness, the Election Officer finds the protest to be timely. The **Rules**, at Article XIV, Section 2(b), state, "Except as otherwise provided . . . all preelection protests . . . must be filed within two (2) working days of the day the protester becomes aware or reasonably should have become aware of the action protested or such protests shall be waived."

Nevertheless, the Election Officer has not treated time limits as an absolute jurisdictional requirement, but rather as a prudential restriction. Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995). Because an allegation of official misuse of union funds to support campaigning constitutes a potentially serious violation of the **Rules**, the Election Officer chooses to decide these protests on the merits.

II. Allegations Concerning the IBT Workshops and the Announcement of a TDU Meeting

Two IBT training workshops were held in Wenatchee, WA and Yakima, WA on Saturday, May 30 and Sunday, May 31, 1998, respectively. The workshops were part of an educational program paid for by a grant from the Department of Labor ("DOL"). The workshops constituted one component of an extension of the original program initiated in 1995 by the IBT to assess the training and employment needs of members affected by changes in the transportation industry. The extension provided additional DOL funding to conduct a similar study of IBT members working in the food processing industry. Under the requirements of the DOL grant, all of the money provided to the extension program had to be utilized by the IBT no later than June 30, 1998.

On April 1, 1998, Stephan Ostrach, a representative of the IBT Warehouse Division, sent Mr. Hobart a letter referring to an earlier phone conversation regarding the DOL grant program and informing him that the training workshops would most likely take place in mid-May, 1998. On May 27, Mr. Fahey contacted Mr. Hobart to inform him that the IBT workshops had been finalized for the following weekend. The protester informed Mr. Fahey that due to a scheduled Joint Council meeting that same weekend, he would be unable to attend and requested that Mr. Fahey reschedule the workshops for another time. Mr. Fahey stated that he was unable to do so due to his schedule and the schedules of the other IBT workshop instructors.

Mr. Hobart sent two Local Union 760 business agents to attend the workshops. The workshops, held in both Spanish and English, consisted of skill training exercises revolving around health and safety issues. They were attended by members from both the food processing industry as well as by individuals from the apple industry, an industry that the IBT has been attempting to organize. The workshops were led by Mr. Fahey and Diane Factor, a trainer from UCLA's Occupational Safety and Health program. Mr. Fahey's travel expenses to Washington were covered by the DOL grant. Ms. Scheer also attended the workshops. Ms. Scheer lives near Portland, Oregon. She is paid by the IBT as an organizer for the apple worker unionization campaign. She frequently works in both Wenatchee and Yakima and maintains an apartment in Wenatchee. She was not reimbursed above and beyond her regular salary for attending the workshops.

After the end of the second IBT workshop, held in Yakima on Sunday, May 31, Maria Martinez, a member of Local Union 556 and a candidate for western region vice-president on the Leedham Slate, mentioned to a number of people that had not yet left that TDU was sponsoring a training regarding workers' on-the-job legal rights the following weekend. It was to be conducted on June 6 and 7 in Pasco, Washington by David Levin, a TDU activist from Detroit. Due to a high level of interest expressed by the members at the Yakima workshop, Ms. Martinez suggested that Mr. Levin might be able to stop on his way to Pasco and conduct a training in Yakima. The protester presented no evidence indicating that the TDU Yakima training meeting was advertised as being related to campaign activity or to the Rerun Election.¹ Furthermore,

none of the parties involved in the workshops could recall any campaign activity during the workshops and no evidence of such activity was presented to the Election Office.

On Tuesday, June 2, 1998, TDU held a meeting at Miller Park in Yakima. Mr. Fahey did not attend. Ms. Scheer attended on her own time. The Election Office Representative questioned numerous individuals who attended the meeting, including three of the four business agents from Local Union 760. None of the individuals questioned remembered any campaign activity during the meeting. Messrs. Rivas and Schuffield did remember some Leedham campaign literature being handed out, but both said that this occurred after the meeting had officially ended. The Election Officer was presented with no evidence of any campaign activity during the course of the meeting.²

The Election Officer fails to find a violation of the **Rules** regarding the participation of Mr. Fahey and Ms. Scheer in the IBT workshops. Mr. Fahey and Ms. Scheer were there for legitimate union business. Mr. Fahey did not attend the June 2 TDU meeting and Ms. Scheer attended on her own personal time. There is no evidence that any campaigning took place at the IBT workshops. The protester bears the burden of proof to present evidence that a violation has occurred. **Rules**, Article XIV, Section 1. The Election Officer has consistently denied protests when the protester offers no evidence to corroborate and support his allegations. Leedham Slate, PR-264-LU237-EOH (September 16, 1998); Hoffa, PR-043-LU385-SCE (January 9, 1998); Pike, P-278-LU952-CLA (January 30, 1996).

¹ The Election Officer notes that although a flyer circulated to advertise the TDU meeting in Pasco on June 6 did contain some campaign material related to the Rerun Election, the flyer made no mention of the Miller Park TDU meeting on June 2.

² Mr. Schuffield told the Election Office Representative that he retained a copy of the campaign literature handed to him after the meeting had ended. Despite a request that he submit the campaign literature to the Election Office as evidence, he failed to do so.

III. Notice of the TDU Meeting

The TDU meeting held at Miller Park in Yakima was the first of three held in Eastern Washington during the week of June 1. The meeting at question was planned, as mentioned above, at the request of a number of workers attending the May 31, 1998 IBT workshop in Yakima. An employee at the Del Monte plant in Toppenish, Washington wrote a sign advertising the Miller Park meeting on the "dry erase" board located in the employee locker room. It was written in Spanish and stated the following:

Union meeting 5 p.m., Miller park on Yakima Street, #4 North.
Tuesday 2 of June. Thank you.

No hand-outs or flyers advertised the June 2 meeting.

Due to the fact that the June 2 meeting was characterized as a union meeting by the notice posted at the Del Monte facility, representatives from Local Union 760 decided to attend to inform the members that the meeting was not an official local union meeting. When Ms. Perez and Messrs. Cerna, Rivas, and Schuffield arrived at Miller Park, they were informed by Mr. Levine that it was a TDU meeting and they were requested to leave. The representatives voiced their concerns regarding the misrepresentation of the meeting on the Del Monte bulletin board and insisted that Mr. Levine inform the crowd that it was not a local union meeting but a TDU meeting. Mr. Levine apologized, informed the representatives that TDU had not participated in writing up the notice at the Del Monte facility, and proceeded to clarify the sponsorship of the meeting to those in attendance. At this point, Mr. Levin again asked that the Local Union 760 representatives leave, but they insisted on remaining.

The fact that the notice of the meeting inadvertently implied that a TDU meeting was a union meeting does not constitute a violation of the **Rules**.

The protester requests that the Election Officer determine if Local Union 760 representatives improperly interfered with the rights of members attending the June 2 TDU meeting. As the Election Officer finds no nexus between the TDU meeting at Miller Park and the Rerun Election, he declines to make any findings on this matter.

Accordingly, the protests are DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one (1) day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

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Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Paige I. Keys, Adjunct Regional Coordinator